

**R64. Agriculture and Food, Conservation Commission.**

**R64-5. Temporary Water Shortage Emergency Loan Program.**

**R64-5-1. Authority and Purpose.**

Pursuant to Section Section 4-18-106 and Title 73, Chapter 3d, Water Preferences During Emergencies, this rule establishes general procedures by which the Agriculture Resource Development Loan (ARDL) program may provide loans from the ARDL fund to persons whose water use is interrupted during a temporary water shortage emergency.

**R64-5-2. Definitions.**

(1) "Application" means an application for a loan from the ARDL fund under Section 73-3d-402.

(2) "ARDL Program Coordinator or Loan Administrator" means the staff administrator of the ARDL program employed by the department.

(3) "Commission" or "UCC" means the Utah Conservation Commission created by Section 4-18-104.

(4) "Consequential damages" means the losses or injuries from the exercise of a preference under this rule that result in material losses to an interrupted user and that are reasonably foreseeable to someone familiar with the industry where use is being made of the water at the time the preference is exercised, including:

- \_\_\_\_\_ (a) loss of sales or operating revenue;
- \_\_\_\_\_ (b) damage to equipment; or
- \_\_\_\_\_ (c) damage to capital facilities or operational assets.

(5) "Department" means the Utah Department of Agriculture and Food.

(6) "Interrupted user" means a person whose beneficial use of water is interrupted by the preferential use of water under Chapter 73-3d and is:

- \_\_\_\_\_ (a) the holder or lessee of an approved application to appropriate water that is interrupted;
- \_\_\_\_\_ (b) the record or equitable holder or lessee of a perfected water right that is interrupted;  
or
- \_\_\_\_\_ (c) the owner, lessor, lessee of a right to use water that is represented by shares of stock in a mutual water company whose water rights are interrupted.

(7) "Preferential user" means a person specified in the executive order declaring a temporary water shortage emergency who uses water preferentially during the temporary water shortage emergency.

**R64-5-3. Eligibility**

(1) An interrupted user is eligible to receive one or more 0% interest loans of up to \$150,000 each from the commission if:

(a) pursuant to Section 73-3d-201, the Governor declares a temporary water shortage emergency via an executive order specifying:

(i) the time period for the emergency;

(ii) the area subject to the order;

(iii) a list of persons entitled to make a request to preferentially use water; and

(iv) the purposes for which a person who is entitled may take the water; and

(b) water held by an interrupted user is used by a preferential user.

(2) The purpose of a loan under this rule shall be to compensate an interrupted user while they are waiting to receive payment of compensation from a preferential user under Section 73-3d-402.

(3) Pursuant to Subsection 73-3d-301(4) the preferential user shall meter the water used and provide this information to the interrupted user and the department.

#### **R64-5-4 Application Procedures**

(1) An interrupted user that is eligible to receive a loan under Section R64-5-3 may apply to the department using a department created form.

(2) An application must contain all necessary information to be considered.

(3) An interrupted user may submit an application during any time during which the executive order declaring the temporary water shortage emergency is in place.

(4) In their application, the interrupted user shall provide sufficient information to establish:

(a) the basis by which the person is entitled to use of the water;

(b) the use of water that would have been made by the person without the interruption;

(c) the length of the interruption;

(d) a good faith estimate of the amount of water the person entitled to the use of water would otherwise have made;

(e) an estimate of the value of the water used, crop losses, and consequential damages incurred as a result of the interruption; and

(f) whether the interrupted user has previously received a loan from the commission for the same interruption of water use.

(4) The interrupted user shall provide any other information requested by the department, including any documentation related to the value of the water used, crop losses, and consequential damages.

(5) the department shall review applications for eligibility and determine the amount to be loaned, not to exceed \$150,000 per loan.

(6) The amount determination in Subsection R64-5-4(5) shall be based on reliable third-party market and producer information, when available, as close as possible to the beginning date of the water delivery interruption.

(7) The amount determination in Subsection R64-5-4(5) may be made based on:

(a) for agriculture commodities, unit prices and base adjustments from:

- (i) applicable United States Department of Agriculture crop pricing data sets;
- (ii) Utah State University Extension data sets;
- (iii) publications, fact sheets, and enterprise budget data sets published by a university;
- (iv) documents provided by the interrupted user to establish historical product records; or
- (v) other information made available to the department;

(b) for non agricultural products or services, the department may consider information from:

- (i) other state agencies;
- (ii) federal agencies;
- (iii) industry leaders within Utah associated with the goods or service forgone by the interrupted user; or
- (iv) other available information or experts; and

(c) for nonagricultural products or services, the department shall determine the quantity of units of nonagricultural good and services during the temporary water shortage emergency by using industry standards or recent product or service records.

(8) Based on recommendation of department staff, the commission shall award loan contracts in the order that completed and eligible applications are received upon receipt of executed documents, including promissory notes and other documents that are agreed to and signed by the borrower.

(9) Each loan contract shall include a provision under which the borrower agrees to notify the department when they have reached an agreement with a preferential user and repay the loan within 30 days after they are paid in full.

(10) Loan contracts may include other provisions at the discretion of the department.

(11) Loans may be issued only to the extent that there is money in the ARDL fund and the limit on outstanding loans under Subsection 4-18-106(6) has not been met.

#### **R64-5-4 Loan Administration and Repayment.**

(1) An interrupted user shall repay the loan issued under this rule within 30 days of the day they are paid in full by a preferential user.

(2) If the department determines that a borrower fails to repay a loan in accordance with this rule, the department may bring suit in a court of competent jurisdiction to require repayment of the loan by the preferential user or interrupted user.

(3) If the department prevails in an action brought under Subsection R64-5-4(2) the department may recover amounts owed, court costs, and reasonable attorney fees.

(4) The commission may delegate responsibilities under this rule to a commission appointed advisory board pursuant to Subsection 4-18-106(7).

**KEY: temporary water shortage emergency; Agriculture Resource Development Loan**

**Date Enacted: 2023**

**Authorizing, and Implemented or Interpreted Law: 4-18-106, 73-3d**